

HOUSE BILL REPORT

ESHB 1251

As Passed House:

March 14, 2005

Title: An act relating to tax refund anticipation loans.

Brief Description: Regulating tax refund anticipation loans.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Santos, Roach, Kirby, Morrell, Simpson, Hasegawa, P. Sullivan and McIntire).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/1/05, 3/1/05 [DPS];

Appropriations: 3/5/05 [DPS(FII)].

Floor Activity:

Passed House: 3/14/05, 59-37.

Brief Summary of Engrossed Substitute Bill

- Requires licensing of facilitators, including annual licensing fees.
- Limits the amount of the loan to the amount of the refund, less fees.
- Allows a borrower to rescind the loan by the close of business the next day.
- Prohibits certain practices by a facilitator.
- Requires certain disclosures in connection with tax refund anticipation loans.
- Imposes penalties for violations.
- Retroactively and prospectively preempts any local government actions on tax refund anticipation loans.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kirby, Chair; Ericks, Vice Chair; Santos, Schual-Berke, Simpson and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Serben and Strow.

Staff: Jon Hedegard (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: Owen Rowe (786-7391).

Background:

Refund anticipation loans (RALs) are loans made by a lender to a taxpayer based on that taxpayer's anticipated federal income tax refund. If a refund is due, a loan may be offered to a taxpayer at the time of tax preparation and filing by a tax preparer or RAL "broker" or "facilitator." The taxpayer/borrower signs a contract authorizing the lender to receive the tax refund from the federal Internal Revenue Service (IRS). The borrower is given a loan secured by the refund immediately. Fees are deducted from the amount of money given to the borrower. The loan is repaid directly by the refund. The borrower is liable if the refund paid by the IRS is less than the loan.

The RALs are generally not subject to the regulation of the Department of Financial Institutions (DFI). The majority of the loan products are made by national banks or subsidiaries. The federal government has preempted state regulation of those entities. The loan broker or facilitator is not subject to regulation under state lending laws.

Summary of Engrossed Substitute Bill:

Definitions

A "refund anticipation loan" (RAL) is defined as a loan borrowed by a taxpayer from a lender based on the taxpayer's anticipated federal income tax refund.

"Department" is the Department of Financial Institutions. "Director" is the Director of the Department of Financial Institutions.

"Facilitator" is defined as a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan.

Facilitator does not include financial institutions (such as a bank or credit union), the affiliate of a financial institution, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan

Licensing

Facilitators must be licensed by DFI. An initial licensing fee of \$250 is imposed. A renewal fee of \$100 is imposed.

Disclosure

Disclosure must be in writing in at least 10 point type.

A facilitator must disclose the refund anticipation loan fee schedule. The schedule must list each fee or charge separately imposed, an estimate of the total of all fees for making of the RAL, and the estimated annual percentage rate calculated under the federal Truth in Lending Act for three representative loans

A facilitator must disclose that:

- the RAL is a loan, not the borrower's actual income tax refund;
- the taxpayer can file an income tax return electronically without applying for a RAL;
- the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;
- the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;
- the IRS does not guarantee that it will pay the full amount of the anticipated refund;
- the IRS does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer;
- the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full;
- the estimated time within which the loan proceeds will be paid to the borrower if the loan is approved; and
- the fee that will be charged, if any, if the borrower's loan is not approved.

Prohibited acts

A Facilitator is prohibited from:

- misrepresenting a material factor or condition of a refund anticipation loan;
- failing to process the application for a refund anticipation loan promptly after the consumer applies for the loan;
- engaging in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan;
- arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of the loan;
- charging a fee for facilitating the loan;
- offering a loan for more than the tax refund, less fees;

acting as a facilitator unless authorized to electronically file tax returns by the Internal Revenue Service; and
arranging a refund anticipation loan unless the facilitator is a tax preparer or works for a person that engages in the business of tax preparation.

Right of Rescission

A borrower may rescind the loan by returning the borrowed amount or the original check by the close of business the day after the loan was made.

Penalties

Persons knowingly violating the chapter are guilty of a misdemeanor and shall be fined up to \$500 per offense.

A violation of the bill is a violation of the Consumer Protection Act.

State preemption

The bill retroactively and prospectively preempts any local government actions on a RAL transaction.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Financial Institutions & Insurance) The refund anticipation loan (RAL) is a fairly new product. It was developed in response to the electronic filing of federal income tax returns and the ability to get refunds more quickly. The City of Seattle passed an ordinance on the subject. Under their ordinance, Seattle regulates additional products. They also have additional standards that may not work as well in all communities, for example a Spanish translation. The issue impacts all citizens of the state. Everyone should receive the same consumer protections. The bill gives statewide protections for all Washingtonians who use these loans. An electronic filing for a refund can take two to eight weeks. Some people believe that they need that money sooner. This may not be the wisest transaction but it happens in every community. The borrower should make informed decisions. The required disclosure compares this product with other options. The bill also preempts local laws and provides the same protections for residents of all communities. Not all communities can afford to adopt and enforce standards on financial products. Historically, financial regulation is a state function. This bill links the product with regulation by the Department of Financial Institutions. There will be a substitute that will include additional disclosure elements.

There should not be different standards in each community. The banks and tax preparers currently supply written disclosures. Banks involved in this product have adopted best practices and require our business partners to follow those best practices. The product is driven by demand. Many consumers need this product. Banks operate under eight federal laws, including the Truth in Lending Act. Full disclosure is important but there should be a statewide standard. The brochures provided to consumers explain all of the possible options.

The "no fee" options are shown first in a side by side comparison. If each city is different, businesses will make some unintentional errors at some point and fall out of compliance. This is a loan. The risk is borne by the lender not the tax preparer. Banks have to have faith in our tax preparers and not extend loans to all applicants. Banks have a maximum amount that they are willing to extend in a loan..

Testimony For: (Appropriations) There is support for this bill, but there are a couple of concerns about this bill that will be addressed with the sponsor.

Testimony Against: (Financial Institutions & Insurance) None.

Testimony Against: (Appropriations) None.

Persons Testifying: (Financial Institutions & Insurance) Representative Santos, prime sponsor; Tom Echols, The Hongkong and Shanghai Banking Corporation of North America; Doug Scott, H&R Block; and Steve Gano, Jackson Hewitt.

Persons Testifying: (Appropriations) Steve Gano, Jackson Hewitt.

Persons Signed In To Testify But Not Testifying: (Financial Institutions & Insurance) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.